IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

Crl.Rev.Pet.No. 791 of 1998()

CC.669/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VARKALA

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REVN. PETITIONER: DEFACTO COMPLAINANT

GANESH KUMAR
S/O.SREENIVASAN POTTI
ALUVILA VEEDU, RAYAMUKKU, KALLUMTHAZHAM P.O.
KOLLAM.

BY ADV. SRI.GOPAKUMAR R.THALIYAL

RESPONDENTS: ACCUSED/COMPLAINANT & STATE

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1. IBRAHIM, S/O.SYED MOHAMMED
   MALAVILA POIKA VEEDU
   MANNANAKKU, KAVALAYOOR DESOM
   MANAMPOOR VILLAGE.

2. STATE REPRESENTED BY THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.SATHIKUMAR
SRI.S.RAJEEV
BY PUBLIC PROSECUTOR SRI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

CRL.R.P.No.791 of 1998

Dated this the 26th day of March, 2007

ORDER

Revision petitioner is the defacto complainant in C.C.No.669/96 with respect to the offences under Sections 279, 337 and 338 of IPC. Revision petition is filed challenging the decision of the court below acquitting the accused. It has been held in the judgment of the court below that the prosecution could not establish beyond reasonable doubt that it was the accused, who drove the vehicle involved in the accident.

2. The prosecution case is that on 12.7.1996 at 9.30 a.m., the accused was driving the mini lorry hit on the motor cycle driven by PW2 was coming from the opposite direction on account of the rash and negligent driving by the accused. PW1 sustained fracture on the left leg and PW2 sustained injuries on his forehead and chest. The evidence adduced in the matter consisted the testimony of Pws' 1 to 8 and Exts. P1 to P12. In the FI statement recorded on 14.7.1996 that is after two days the version is that it was vehicle No.KRU 5164 that hit the motor

cycle. On 16.7.1996, the investigating officer filed a report, Ext.P10 mentioning that on investigation it was found that the vehicle involved is mini lorry with registration No.KEQ 493 and not KRU 5164. Pws' 1 and 2 have identified the accused for the first time in the court. Pws' 3 and 4 who were the independent witnesses did not support the prosecution and were treated as hostile. The only evidence in support of the prosecution case as to the identity of the person who drove the vehicle is the alleged statement rendered by the accused i.e, Ext. P12 to the police that it was he who drove the vehicle at the relevant time. Evidently the above statement given to the police cannot be relied on to convict the accused as it is hit by Section 25 of the Evidence Act. In the circumstances, I find that there is no ground at all to interfere in the finding of the trial court.

The criminal revision petition is dismissed.

K.R.UDAYABHANU,
JUDGE

csl